



ATTORNEYS AT LAW



Robert Greene Sterne
Edward J. Kessler
Jorge A. Goldstein
David K.S. Cornwell
Robert W. Esmond
Tracy-Gene G. Durkin
Michele A. Cimbala
Michael B. Ray
Robert E. Sokohl
Eric K. Steffe
Michael Q. Lee
Steven R. Ludwig
John M. Covert
Linda E. Alcorn
Robert C. Millonig
Donald J. Featherstone
Timothy J. Shea, Jr
Michael V. Messinger

Judith U. Kim
Patrick E. Garrett
Jeffrey T. Helvey
Heidi L. Kraus
Eldora L. Ellison
Thomas C. Fiala
Donald R. Banowitz
Peter A. Jackman
Jeffrey S. Weaver
Kendrick P. Patterson
Vincent L. Capuano
Brian J. Del Buono
Virgil Lee Beaton
Theodore A. Wood
Elizabeth J. Haanes
Joseph S. Ostroff
Frank R. Cottingham
Rae Lynn P. Guest

Daniel A. Klein
Jason D. Eisenberg
Michael D. Specht
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Jon E. Wright
LuAnne M. DeSantis
Ann E. Summerfield
Helene C. Carlson
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Nicole D. Dretar
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Bryan S. Wade
Aaron L. Schwartz
Shannon A. Carroll*

Wesley W. Jones*
Matthew E. Kelley*
Michelle K. Holoubek*
Marsha A. Rose*

Registered Patent Agents*
Karen R. Markowicz
Nancy J. Leith
Matthew J. Dowd
Katrina Yujian Pei Quach
Bryan L. Skelton
Robert A. Schwartzman
Teresa A. Colella
Victoria S. Rutherford
Simon J. Elliott
Julie A. Heider
Mita Mukherjee
Scott M. Woodhouse

Christopher J. Walsh
Liliana Di Nola-Baron
Peter A. Socarras
Jeffrey Mills
Danielle L. Letting

Of Counsel
Kenneth C. Bass III
Marvin C. Guthrie

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*Admitted only in Virginia
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DAC *EW*

January 3, 2006

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

WRITER'S DIRECT NUMBER:
(202) 772-8638
INTERNET ADDRESS:
MKELLEY@SKGF.COM

Art Unit 1642
Attn: Mail Stop Patent Ext.

Re: U.S. Issued Patent
Patent No. 6,960,449 B2; Issued: November 1, 2005
For: **Class Characterization of Circulating Cancer Cells Isolated from
Body Fluids and Methods of Use**
Inventors: Wang *et al.*
Our Ref: 2314.0060002/JUK/MEK

Sir:

Transmitted herewith for appropriate action are the following documents:

1. Credit Card Payment Form (PTO-2038) in the amount of \$200.00 to cover:
\$200.00 Patent Term Adjustment Fee (37 C.F.R. § 1.18(e));
2. Request for Reconsideration of Patent Term Adjustment Determination
Under 37 C.F.R. § 1.705; and
3. One (1) return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier. In the event that extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Matthew E. Kelley
Matthew E. Kelley
Attorney for Patentees
Registration No. 55,887

JUK/MEK/lam
Enclosures

479985.1



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of:

Wang *et al.*

Patent No. 6,960,449 B2

Issued: November 1, 2005

For: **Class Characterization of
Circulating Cancer Cells Isolated from
Body Fluids and Methods of Use**

Confirmation No. 3508

Art Unit: 1642

Examiner: Canella, Karen A.

Atty. Docket: 2314.0060002/JUK/MEK

**Request for Reconsideration of Patent Term Adjustment
Determination Under 37 C.F.R. § 1.705(d)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Mail Stop Patent Ext.

Sir:

Pursuant to 37 C.F.R. § 1.705(d) and § 1.705(b)(1) and (b)(2), Patentees hereby provide a concise statement of facts involved, as well as payment of fee set forth in 37 C.F.R. § 1.18(e). This petition is being filed on January 3rd because the due date of January 1 was a Sunday and January 2nd was a federal holiday. Patentees are filing this Request under 37 C.F.R. § 705(d) to correct the revised patent term adjustment in the captioned patent because the revised patent term adjustment should have indicated that Patentees are entitled to additional patent term.

Statement of the Facts:

Patentees hereby request that the Patent Term Adjustment (PTA) for the captioned patent be corrected to allow an addition of 181 days to the current PTA of 93 days, for a total PTA of 274 days.

U.S. Appl. No. 09/501,179, which issued into the captioned patent (the '449 patent), was filed on November 1, 2001. On November 1, 2005, the U.S. Patent and

Trademark Office (PTO) issued the '449 patent indicating that the term of this patent is extended under 35 U.S.C. § 154(b) by 93 days. According to PTO's Patent Application Information Retrieval (PAIR) system, the PTA of 93 days is calculated as follows: the PTO delay of 365 days reduced by "Applicant Delay of 120 days" and "PTO Adjustment of 152 days."

The total Applicant Delay appears to be 91 days, not the "Applicant Delay of 120 days" and a "PTO Adjustment of 152 days." The PTO mailed a Decision Granting Letter Regarding PTA dated September 19, 2005, which noted that Applicants' delay was 91 days. Patentees are not aware of other circumstances during the prosecution of the application that constitute a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704(c) other than the above mentioned delay of 91 days caused by the failure to reply to the June 2003 Office Action within three months.

The 120 days of delay currently attributed to Patentees is incorrect. Applicants filed a Letter Regarding Patent Term Adjustment Calculation on October 18, 2004, which was after the Notice of Allowance dated September 20, 2004 but before Applicants paid the issue fee on December 8, 2004. According to PAIR, the PTO entered this Letter as a Miscellaneous Incoming Letter and also entered it as a petition. Applicants sent this Letter to the PTO in accordance with Applicants' duty of good faith and candor because the PTO had granted in error a PTA in Applicants' favor. However, the current PTA calculation on PAIR indicates that the PTO counted this letter as being 120 days of Applicant delay which Patentees believe was improper.

Further, the Patentees do not understand the reason for the reduction due to "PTO Adjustment of 152 days."

Finally, the '449 patent is not subject to a terminal disclaimer.

The Precise Relief Requested:

It is respectfully requested that the PTO change the PTA in this case to 274 days or, if this number is incorrect, whatever sum the PTO calculations determine to be appropriate. This number has been calculated based on 365 days of PTO delay (failure to issue the patent within 3 years of filing) from which 91 days of Applicants' delay (failure to respond to the June 2003 Office Action) has been subtracted. The PTO also appears to have erroneously adjusted the PTA by subtracting 152 days and Applicants respectfully request consideration of this deduction as part of this petition.

Further, Applicants request a waiver of the fee under 37 C.F.R. § 1.18(e) in this case because this Request has been filed to correct PTO errors in the calculation of the PTA for the '449 patent. Specifically, time has been deducted from the PTA for the captioned patent because of the Letter Regarding Patent Term Adjustment filed October 18, 2004 by Applicants that pointed out the PTO error in calculating PTA that resulted in Applicants receiving PTA they were not entitled to at that time. As this Letter was filed in good faith pursuant to Applicants' duty of candor with the PTO, Patentees should not be charged a fee for this petition to correct further PTA errors stemming from this original letter.

However, should the requested waiver of the fee be denied, in accordance with 37 C.F.R. § 1.705(b)(1), the fee set forth in 37 C.F.R. § 1.18(e) is provided in our accompanying Credit Card Payment Form PTO-2038. It is not believed that

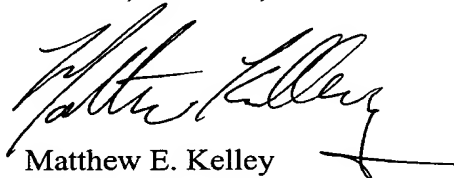
additional fees are required beyond those that may otherwise be provided in documents accompanying this paper. However, if additional fees are required, the U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

If it is believed, for any reason, that personal communication will expedite consideration of this Request, please do not hesitate to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Request is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read "Matthew E. Kelley", with a stylized flourish at the end.

Matthew E. Kelley
Attorney for Patentees
Registration No. 55,887

Date: January 3, 2005

1100 New York Avenue, N.W.
Suite 800
Washington, D.C. 20005-3934
(202) 371-2600